

**ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT, PROVIDING PENALTIES FOR THE VIOLATION THEREOF**

**WHEREAS**, Environmental Tobacco Smoke is a leading public health problem in the city of Talladega, Alabama and throughout the United States; and

**WHEREAS**, the harmful effects of Environmental Tobacco Smoke are not confined to smokers, but also cause severe discomfort and illness to nonsmokers, and

**WHEREAS**, there exists conclusive evidence that Environmental Tobacco Smoke causes cancer, cardiovascular disease, respiratory disease, negative birth outcomes, allergies and irritations to the eyes, ears, nose, and throat of both smokers and nonsmokers, and

**WHEREAS**, based on *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*, dated June 2006; there are Six (6) Major Conclusions:

1. Many millions of Americans, both children and adults, are still exposed to secondhand smoke in their homes and workplaces despite substantial progress in tobacco control.
2. Secondhand smoke exposure causes disease and premature death in children and adults who do not smoke.
3. Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma. Smoking by parents causes respiratory symptoms and slows lung growth in their children.
4. Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.
5. The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.
6. Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke.

**WHEREAS**, there are laws, ordinances and regulations in place that protect workers and the public from other environmental hazards, including Class A carcinogens such as asbestos, arsenic and benzene, but none which regulate exposure to Environmental Tobacco Smoke.

**NOW THEREFORE, BE IT ORDAINED** by the City Council of Talladega, Alabama, that the Council recognizes the rights of those who wish to breathe smoke free air and establishes this Ordinance to protect and improve the public health of welfare by prohibiting smoking in public places and places of employment.

**Sec. 1. Definitions**

The following words and phrases, whenever used in this Ordinance, shall be construed as defined in this Section:

1. "Attached Bar" means a bar area of a restaurant.
2. "Bar" means an establishment that is devoted primarily to the serving of alcoholic beverages for consumption by guests on the premises and where food sales represent twenty-five (25) percent or less of the bar's gross annual receipts. This definition includes, but is not limited to taverns, nightclubs, cocktail lounges, and cabarets.
3. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
4. "City" means City of Talladega, Alabama.
5. "City Council" means City Council of the City of Talladega, Alabama.
6. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services of a non-profit entity.
7. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
8. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways) which extend from the floor to the ceiling.
9. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
10. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
11. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income as a club under 26 U.S.C. Section 501.
12. "Private Function" means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining, where membership or specific invitation is a prerequisite to entry and where the event is not intended to be open to the public.
13. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a "public place" when being used for a function to which the general public is

14. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include an attached bar.

15. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

16. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

17. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

18. "Smoking" means inhaling, exhaling, burning, or carrying a lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

19. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

## **Sec. II. Application of Ordinance to Talladega-owned Facilities**

All enclosed facilities, including buildings, leased, or owned by the City of Talladega, shall be subject to the provisions of this Ordinance.

## **Sec. III. Prohibition of Smoking in Public Places**

Smoking shall be prohibited in all enclosed public places within the City of Talladega, including but not limited to, the following places:

1. Aquariums, galleries, libraries, and museums.
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
3. Bingo facilities when a bingo game is in progress.
4. Bars other than attached bars.
5. Convention facilities.
6. Educational facilities, both public and private.
7. Elevators.
8. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
9. Health care facilities.
10. Hotel and motel lobbies.
11. Licensed child care and adult care facilities.
12. Lobbies, hallways, and other common areas in apartment building, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
13. Polling places.

15. Public transportation facilities, including buses and taxicabs, under the authority of the City of Talladega, and ticket, boarding, and waiting areas of public transit depots.
16. Restaurants, including attached bars.
17. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
18. Retail Stores.
19. Rooms, chambers, places of meeting or public assembly, including school buildings, under control of an agency, board, commission, committee or council of the City of Talladega or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the city.
20. Service lines.
21. Shopping malls.
22. Sports arenas, including enclosed places in outdoor arenas.

#### **Sec. IV. Prohibition of Smoking in Places of Employment**

- A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all exiting employees by the effective date of this Ordinance and all prospective employees upon their application for employment.

#### **Sec. V. Prohibition of Smoking in Outdoor Arenas or Stadiums**

Smoking shall be prohibited in all seating areas of all outdoor arenas, stadiums, and amphitheaters.

#### **Sec. VI. Reasonable Distance**

1. Smoking is prohibited within a reasonable distance of ten (10) feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.
2. The owner, operator, manager or other persons in control of an establishment may declare that smoking is prohibited within a greater distance outside an enclosed area where smoking is prohibited. If smoking is prohibited outside the building within a greater distance than ten (10) feet, a conspicuous sign shall be posted at every entrance stating that smoking is prohibited within a specific distance (in feet) from the building. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this section is posted.

#### **Sec. VII. Where Smoking Not Regulated**

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections III and IV:

1. Private residences, except when used as a licensed child care, adult day care, or health care facility.
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty-five (25) percent of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed except to add additional nonsmoking rooms.

4. Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms when these places are being used for private functions; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.

5. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.

6. Private clubs that have no employees, except when being used for a function to which the general public is invited.

7. Outdoor areas of places of employment except those covered by the provisions of Section VI.

### **Sec. VIII. Declaration of Establishment as Nonsmoking**

Notwithstanding any other provision of this Ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section IX(A) is posted.

### **Sec. IX. Posting of Signs**

A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by the Ordinance, by the owner, operator, manager, or other person in control of that place.

B. Every public place and place of employment where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

C. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by the Ordinance by the owner, operator, manager, or other person having control of the area.

D. The owner, operator, manager or other person having control of any area where smoking is prohibited by this Ordinance shall request any person smoking in violation of this Ordinance to stop.

### **Sec. X. Nonretaliation: Nonwaiver of Rights**

A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this Ordinance.

B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

### **Sec. XI. Enforcement**

A. Authority to enforce this Ordinance shall be held by the City of Talladega, or its designees.

B. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of Talladega.

D. Notwithstanding any other provision of this Ordinance, an employee or private citizen may bring legal action to enforce this Ordinance.

E. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the City of Talladega Police or Fire Chief.

F. The City of Talladega's Fire Department, or its designee, the Talladega County Health Department, or its designee shall while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.

G. In addition to the remedies provided by the provisions of this Section, The Police Chief, Fire Chief or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

H. Any fines or fees collected under this Ordinance shall be used for the enforcement of these regulations.

## **Sec. XII. Violations and Penalties**

A. It shall be the responsibility of the owner, operator, manager, or other person in control of an establishment, facility, or outdoor area to ensure compliance with all sections of this Ordinance pertaining to his/her place of business. A violator of this Ordinance may receive:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.
2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

B. If the owner, operator, manager, or other person in control of an establishment, facility, or outdoor area attempts to enforce this Ordinance and a patron violates provisions of this Ordinance, then the owner, operator, manager, or other person in control shall not be deemed to be in violation of this Ordinance and the patron shall be subject to a fine as follows:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.
2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

C. Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

D. In addition to the fines established by this Section, violation of this Ordinance by a person who owns, manages, operates or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

## **Sec. XIII. Public Education**

The City Manager or his designees shall engage in a continuing program to explain and clarify the purposes and requirements of this Ordinance to citizens affected by it, and to guide owners, managers, and operators in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Ordinance.

**Sec. XIV. Other Applicable Laws**

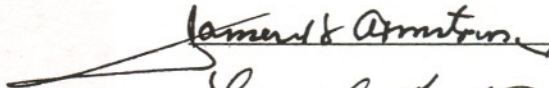
This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

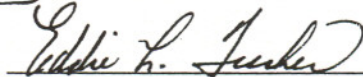
**Sec. XV. Severability**

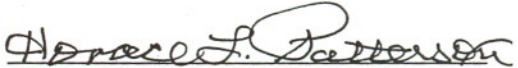
If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

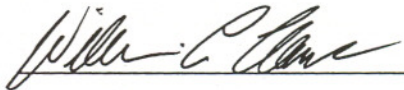
**Sec. XVI. Effective Date**

This Ordinance shall become effective on 1 September 2007, after the date of the adoption and publication as required by law.

  
James L. Armstrong

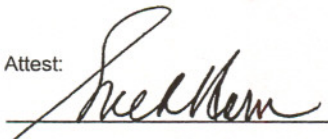
  
Eddie L. Fisher

  
Horace F. Patterson

  
Willie C. Clark

  
Paul D. Pope

Members of Council

Attest:   
Sue A. Horn - City Clerk